



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2022-0333]

RIN 1625-AA87

### Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a permanent security zone for all navigable waters of the Lower Mississippi River (LMR) from mile marker (MM) 94 to MM 97, Above Head of Passes (AHP), New Orleans, LA. This security zone is necessary to expedite the establishment and enforcement of the security zones to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. This proposed rulemaking would prohibit entry of vessels or persons from entering the security zone unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. This proposed security zone would be enforced only as necessary by the COTP through a notification of enforcement published in the **Federal Register** and announced through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2022-0333 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Commander William A. Stewart, Sector New Orleans, U.S. Coast Guard; telephone 504-365-2246, email [William.A.Stewart@uscg.mil](mailto:William.A.Stewart@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

AHP	Above Head of Passes
CFR	Code of Federal Regulations
COTP	Captain of the Port New Orleans
DHS	Department of Homeland Security
<b>FR</b>	<b>Federal Register</b>
LMR	Lower Mississippi River
MM	Mile Marker
NPRM	Notice of proposed rulemaking
NOE	Notice of Enforcement
§	Section
U.S.C.	United States Code

### **II. Background, Purpose, and Legal Basis**

During the preceding several years, the COTP has published multiple temporary final rules (TFRs) to implement heightened security measures to protect waterfront facilities, visiting dignitaries, large volumes of festival participants, and/or vessels from destruction, loss, or injury from sabotage, subversive acts, or other malicious or potential terrorist acts within the LMR from MM 94 to MM 97, AHP, New Orleans, LA. The COTP expects that events requiring heightened protection will increase as New Orleans continues to hold popular annual events, like Mardi Gras and French Quarter Fest, as well as remains a top destination for events of national significance, such as sporting events

and Navy Fleet Week.

The COTP proposes to establish a permanent security zone for all navigable waters of the LMR from MM 94 to MM 97, AHP, New Orleans, LA, and, thus, expedite the establishment and enforcement of the security zones. The enforcement of security zones within this area of the LMR is usually limited in duration, lasting a few hours to a few days for each waterway closure, creating minimal impact to vessel traffic. Moreover, the proposed rule would allow vessels to seek permission to enter the security zone from the COTP or a designated representative. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a permanent security zone for all navigable waters of the LMR from MM 94 to MM 97, AHP, New Orleans, LA. This security zone is necessary to protect vessels, waterfront facilities, the public, and other surrounding areas from destruction, loss, or injury caused by sabotage, subversive acts, accidents, or other actions of a similar nature. While this zone would encompass a three-mile section of the waterway, the COTP would limit the enforcement of the zone only to the areas specified in the notification of enforcement published in the Federal Register. No vessel or person would be permitted to enter the security zone without obtaining permission from the COTP or a designated representative. In accordance with 33 CFR 165.7, for each enforcement of the security zone established under this proposed rule, the COTP would publish a notification of enforcement in the **Federal Register** as early as practicable. The COTP or a designated representative would inform the public of the enforcement area and period of this security zone through Vessel Traffic Services, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate. The regulatory text we are proposing appears at the end of this document.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the security zone. While this zone would be permanent, it would only be enforced on an as needed basis where the COTP would limit the enforcement to areas specified in the notification of enforcement published in the Federal Register. Moreover, the Coast Guard would inform the public of the enforcement area and period of this security zone through Vessel Traffic Services, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate, and the rule would allow vessels to seek permission to enter the security zone.

##### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast

Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a security zone to protect the public in a designated area of the Mississippi River near New Orleans, LA, for a limited number of days. Normally such actions are categorically excluded from further review under paragraph

L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0333 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph,

and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.846 to read as follows:

#### **§ 165.846 Security Zone; Lower Mississippi River, Mile Marker 94 to 97 Above Head of Passes, New Orleans, LA.**

(a) *Location.* The following area is a security zone: All navigable waters of Lower Mississippi River from mile marker (MM) 94 (29°57'32" N, 90°03'05" W) to MM 97 (29°55'19" N, 90°04'00" W), NAD83 datum, Above Head of Passes in New Orleans,



LA.

(b) *Enforcement period.* The security zone established by this section will be enforced only upon notice of the Captain of the Port New Orleans (COTP). In accordance with subpart A of this part, for each enforcement of the security zone established under this section, the COTP will publish a notification of enforcement in the **Federal Register** as early as is practicable. In addition, the COTP will also inform the public of the enforcement area and times of this section as indicated in paragraph (d) of this section.

(c) *Regulations.* (1) Under the general security zone regulations in subpart D of this part, no person or vessel may enter the security zone described in paragraph (a) of this section unless authorized by the COTP or a designated representative. A *designated representative* means any Coast Guard commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of Sector New Orleans; to include a Federal, State, and/or local officer designated by or assisting the COTP in the enforcement of the security zone.

(2) To seek permission to enter, contact the COTP or a designated representative by telephone at (504) 365-2545 or VHF-FM Channel 16 or 67. Those in the security zone must transit at their slowest speed and comply with all lawful orders or directions given to them by the COTP or a designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement period of this security zone through Vessel Traffic Service Advisories, Broadcast Notices to Mariners (BNMs), Local Notice to Mariners (LNM)s, and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 27, 2022.

K. K. Denning,

Captain, U.S. Coast Guard,

Captain of the Port New Orleans.

